

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN L. OWENS,
Petitioner,

v.

RON DAVIS, Warden,
Respondent.

Case No. 16-03628 EJD (PR)

ORDER OF DISMISSAL

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his continued confinement. Petitioner has paid the filing fee. (Docket No. 6.)

BACKGROUND

According to the petition, Petitioner was found guilty of kidnapping to commit a robbery by a jury in Alameda County Superior Court. (Pet. at 2.) Petitioner was sentenced to an indeterminate sentence of life with the possibility of parole on March 10, 1989. (Pet. Attach. at 2.)

Petitioner filed state habeas petitions raising the claim in the instant petition in the state superior, appellate, and high courts without success. (Pet. Ex. 1.) The state high

1 court summarily denied the petition on May 11, 2016. (Id.)

2 Petitioner filed the instant federal habeas petition on June 25, 2016.

3 4 DISCUSSION

5 A. Standard of Review

6 This court may entertain a petition for a writ of habeas corpus “in behalf of a person
7 in custody pursuant to the judgment of a State court only on the ground that he is in
8 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
9 § 2254(a).

10 It shall “award the writ or issue an order directing the respondent to show cause
11 why the writ should not be granted, unless it appears from the application that the applicant
12 or person detained is not entitled thereto.” Id. § 2243.

13 B. Legal Claims

14 Petitioner claims that he has been confined passed his first eligible release date of
15 August 1994, and that he is now serving a “disproportionate” sentence. (Pet. Attach. at 3.)
16 In support of his claim, Petitioner only provides citations to state law. (Pet. at 6.) Because
17 of his reference to disproportionality, the Court will liberally construe the claim as a
18 violation of the Eighth Amendment.

19 The Eighth Amendment contains a “narrow” proportionality principle. Graham v.
20 Florida, 560 U.S. 48, 59-60 (2010). This principle “‘does not require strict proportionality
21 between crime and sentence’ but rather ‘forbids only extreme sentences that are grossly
22 disproportionate to the crime.’” Id.; see Solem v. Helm, 463 U.S. 277, 303 (1983)
23 (sentence of life imprisonment without possibility of parole for seventh nonviolent felony
24 violates 8th Amendment). “[O]utside the context of capital punishment, successful
25 challenges to the proportionality of particular sentences will be exceedingly rare.” Solem,
26 463 U.S. at 289-90; see also Crosby v. Schwartz, 678 F.3d 784, 795 (9th Cir. 2012)
27 (“Circumstances satisfying the gross disproportionality principle are rare and extreme, and
28

1 constitutional violations on that ground are ‘only for the extraordinary case.’”) (citing
2 Lockyer v. Andrade, 538 U.S. 63, 77 (2003)).

3 Under this proportionality principle, the threshold determination for the court is
4 whether petitioner’s sentence is one of the rare cases in which a comparison of the crime
5 committed and the sentence imposed leads to an inference of gross disproportionality. See
6 Norris, 622 F.3d at 1290; United States v. Bland, 961 F.2d 123, 129 (9th Cir. 1992)
7 (quoting Harmelin, 501 U.S. at 1005); accord Ewing, 538 U.S. at 11-12 (applying
8 Harmelin standard); see, e.g., Norris, 622 F.3d at 1292-96 (concluding that sentence of life
9 without possibility of parole for conviction of first degree child molestation of 5-year-old
10 girl, where touching was brief and over clothing, was not grossly disproportionate).

11 Petitioner was convicted of kidnapping with the intent to commit a robbery under
12 Penal Code section 209(b), which is a felony. Section 209(b) explicitly states that the
13 punishment is “life with the possibility of parole.” Accordingly, Petitioner’s sentence was
14 clearly within statutory limits. With respect to disproportionality, the Court is not
15 persuaded that Petitioner’s sentence one of those “rare cases” in which there is an
16 inference of gross disproportionality, especially when compared to Norris which involved
17 a sentence of life *without* the possibility of parole for a serious felony that was found not
18 grossly disproportionate. *Id.* Here, Petitioner’s crime was also a serious felony but he
19 received a sentence *with* the possibility of parole. The fact that parole has not been granted
20 does not per se state to a constitutional violation. Only where Petitioner was not afforded
21 procedural protections, which entitles a prisoner to nothing more than a fair hearing and a
22 statement of reasons for a parole board’s decision, does he state a due process violation
23 warranting federal habeas relief. See Swarthout v. Cooke, 562 U.S. 216, 220 (2011).
24 Petitioner makes no such allegations in the instant petition. Accordingly, the petition is
25 DISMISSED for failure to state a claim.

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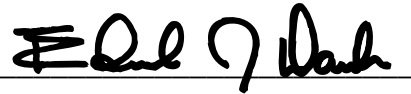
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CONCLUSION

For the foregoing reasons, the petition is DISMISSED for failure to state a cognizable claim for federal habeas relief.

IT IS SO ORDERED.

Dated: 10/27/2016



EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California

Order of Dismissal
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